



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 155

[Docket No. USCG-2011-0576]

RIN 1625-AB75

Higher Volume Port Area—State of Washington

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes redefining the boundaries of the existing higher volume port area in the Strait of Juan de Fuca and Puget Sound, in Washington. This rulemaking is required by statute, and is related to the Coast Guard's maritime safety and stewardship missions.

DATES: Comments and related material must either be submitted to our online docket via <http://www.regulations.gov> on or before **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG-2011-0576 using any one of the following methods:

- (1) Federal eRulemaking Portal: <http://www.regulations.gov>.

- (2) Fax: 202-493-2251.
- (3) Mail: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.
- (4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail LCDR John G. Peterson, CG-CVC-1, Coast Guard; telephone 202-372-1226, e-mail John.G.Peterson@uscg.mil. If you have questions on viewing or submitting material to the docket, call Ms. Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

- I. Public Participation and Request for Comments
- II. Abbreviations
- III. Background
- IV. Discussion of Proposed Rule
- V. Regulatory Analyses
 - A. Regulatory Planning and Review
 - B. Small Entities
 - C. Assistance for Small Entities
 - D. Collection of Information
 - E. Federalism
 - F. Unfunded Mandates Reform Act
 - G. Taking of Private Property

H. Civil Justice Reform
I. Protection of Children
J. Indian Tribal Governments
K. Energy Effects
L. Technical Standards
M. Environment

I. Public Participation and Request for Comments

We encourage you to submit comments (or related material) on this rulemaking. We will consider all submissions and may adjust our final action based on your comments. Comments should be marked with docket number USCG-2011-0576 and should provide a reason for each suggestion or recommendation. You should provide personal contact information so that we can contact you if we have questions regarding your comments; but please note that all comments will be posted to the online docket without change and that any personal information you include can be searchable online (see the Federal Register Privacy Act notice regarding our public dockets, 73 FR 3316, Jan. 17, 2008).

Mailed or hand-delivered comments should be in an unbound 8½ x 11 inch format suitable for reproduction. The Docket Management Facility will acknowledge receipt of mailed comments if you enclose a stamped, self-addressed postcard or envelope with your submission.

Documents mentioned in this notice of proposed rulemaking and all public comments, are in our online docket at <http://www.regulations.gov> and can be viewed by following the Web site's instructions. You can also view the docket at the Docket Management Facility (see the mailing address under ADDRESSES) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

We are not planning to hold a public meeting but will consider doing so if public comments indicate a meeting would be helpful. We would issue a separate Federal Register notice to announce the date, time, and location of such a meeting.

II. Abbreviations

BLS	Bureau of Labor Statistics
CFR	Code of Federal Regulations
E.O.	Executive Order
FR	<u>Federal Register</u>
GSA	General Services Administration
HVPA	Higher volume port area
MISLE	Marine Information for Safety and Law Enforcement
NAICS	North American Industry Classification System
OMB	Office of Management and Budget
OSRO	Oil spill removal organization
Pub. L.	Public Law
SBA	Small Business Administration
§	Section symbol
U.S.C.	United States Code
VRP	Vessel response plan

III. Background

The legal basis of this proposed rule is 33 U.S.C. 1231 and 1321(j), which require the Secretary of the department in which the Coast Guard is operating to issue regulations necessary for implementing the Ports and Waterways Safety Act, and to require the President to issue regulations requiring response plans and other measures to protect against oil and hazardous substance spills. The President's authority under 33 U.S.C. 1321(j) is delegated to the Secretary by Executive Order (E.O.) 12777, and the Secretary's authority is delegated to the Coast Guard by DHS Delegation No. 0170.1(II)(70), (73), and (80).

The purpose of this proposed rule is to implement section 710 of the Coast Guard Authorization Act of 2010 (“the Act”),¹ which requires the Coast Guard to initiate by October 15, 2011, a rulemaking to modify the 33 CFR 155.1020 definition of the State of Washington’s higher volume port area (the Washington HVPA) by replacing a reference to Port Angeles, WA, with a reference to Cape Flattery, WA, and by reviewing any modifications to vessel response plans (VRPs), made in response to the definitional change, not later than October 15, 2015. The Coast Guard initiated this project by the October 15, 2011 deadline.

Oil or hazardous material pollution prevention regulations for a U.S. vessel, and for a foreign vessel operating in U.S. waters, appear in Coast Guard regulations at 33 CFR part 155. Many of those regulations require a vessel response plan (VRP) describing measures that the vessel owner or operator has taken or will take to mitigate or respond to an oil spill from the vessel. The VRP must demonstrate the vessel’s ability, following a spill, to secure response resources within given time periods. These measures typically include the services of nearby response resources under a contract between the vessel’s owner or operator and an oil spill removal organization (OSRO) that owns the response resources. The regulations provide for three different timeframes within which a combination of required response resources must arrive on the scene, which are described as Tiers 1, 2, and 3.

In 33 CFR part 155, subparts D (petroleum oil as cargo), F (animal fat or vegetable oil as cargo), G (non-petroleum oil as cargo), and J (petroleum oil as fuel or secondary cargo) all share the same definition of “Higher volume port areas.” Required response times are significantly reduced in HVPAs. For example, Tier 1 response times

¹ Pub. L. 111-281, 124 Stat. 2905.

for an oil tanker within an HVPA are half that required of the same vessel operating in open ocean. As defined in 33 CFR 155.1020, the Strait of Juan de Fuca and Puget Sound, Washington constitute one of 14 HVPAs designated around the country.

Since 1996, 33 CFR 155.1020 has defined the seaward boundary of the Washington HVPA as an arc 50 nautical miles seaward of the entrance to Port Angeles, Washington. Port Angeles is approximately 62 miles inland from the Pacific Ocean entrance to the Strait of Juan de Fuca, at Cape Flattery, WA, and therefore, the Washington HVPA does not currently include any Pacific Ocean waters. Section 710 of the Act requires the Coast Guard to initiate a rulemaking to relocate the HVPA's arc so that it extends seaward from Cape Flattery, not Port Angeles. This would add 50 nautical miles of Pacific Ocean water and an additional 12 nautical miles in the western portion of the Strait of Juan de Fuca. Waters affected by sec. 710 and by this rulemaking are shown on National Oceanic and Atmospheric Administration charts.²

Section 710 requires us to initiate a rulemaking not later than October 15, 2011, to modify the definition of the Washington HVPA to relocate the arc. Section 710 also requires us to approve VRPs that require modification as a result of the rulemaking not later than October 15, 2015. We have determined that, with respect to existing VRPs, no modifications or new Coast Guard VRP approvals will be needed.

To maximize the affected public's ability to plan for the change in the Washington HVPA's boundaries, we published a 2011 *Federal Register* notice of our intent to comply with sec. 710.³ This advised the public that regulatory implementation

² Waters affected by sec. 710 and this rulemaking are shown on National Oceanic and Atmospheric Administration charts 18460 (Cape Flattery, WA) and 18465 (Port Angeles, WA).

³ 76 FR 76299 (Dec. 7, 2011).

of sec. 710 was forthcoming. The notice did not request public comments and no public comments were received.

IV. Discussion of Proposed Rule

The current definition of the Washington HVPA's boundaries⁴ reads: "*Higher volume port area* means the following areas, including any water area within 50 nautical miles seaward of the entrance(s) to the specified port: ... (13) Strait of Juan De Fuca at Port Angeles, WA to and including Puget Sound, WA." In strict compliance with the express wording of sec. 710(a), we propose amending that definition by striking "Port Angeles, WA" and inserting "Cape Flattery, WA" in its place. As amended, the definition would then read: "*Higher volume port area* means the following areas, including any water area within 50 nautical miles seaward of the entrance(s) to the specified port: ... (13) Strait of Juan de Fuca at Cape Flattery, WA to and including Puget Sound, WA."

Port Angeles lies about 62 miles east of the entrance to the Strait of Juan de Fuca. By moving the arc so that it centers on Cape Flattery, which lies at the entrance to the Strait, the proposed redefined Washington HVPA would cover an additional 50 nautical miles of Pacific Ocean water, while continuing to cover all the waters now included within the current HVPA. The larger Washington HVPA may affect the time and resources needed to respond to an oil spill from a vessel, because it is harder and more time-consuming to transit rough Pacific Ocean waters than it is to transit the sheltered waters of the Strait and the Sound. (We discuss these possibilities in more detail in the Regulatory Analysis section that follows.)

V. Regulatory Analyses

⁴ 33 CFR 155.1020(13).

We developed this proposed rule after considering numerous statutes and E.O.s related to rulemaking. Below we summarize our analyses based on these statutes or E.O.s.

A. Regulatory Planning and Review

Executive Orders 12866 (“Regulatory Planning and Review”) and 13563 (“Improving Regulation and Regulatory Review”) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This proposed rule is not a significant regulatory action under section 3(f) of E.O. 12866 as supplemented by E.O. 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of E.O. 12866. The Office of Management and Budget (OMB) has not reviewed it under E.O. 12866. We developed an analysis of the costs and benefits of the proposed rule to ascertain its probable impacts on industry. A draft preliminary Regulatory Assessment follows.

This proposed rule would expand the existing Washington HVPA for Puget Sound and the Strait of Juan de Fuca. Currently, the Washington HVPA boundary is measured from Port Angeles in a 50-mile seaward arc westward to the Pacific Ocean. As mandated by sec. 710 of the Act, this proposed rule would amend the definition of the term “Higher volume port area” and relocate the point at which the seaward arc is measured from Port Angeles to Cape Flattery, WA, an approximately 62-mile westward

shift. As a result, the Washington HVPA would cover an additional 50 miles of open ocean and an additional 12 nautical miles in the western portion of the Strait of Juan de Fuca. A VRP must list the OSRO provider that the vessel owner or operator has contracted with and stipulate the vessel's ability to secure response resources within specific regulatory timeframes (Tiers 1, 2, and 3) in the event of an oil spill. This proposed rule would codify the changes delineated in the Act and it would not require changes to VRPs.

Affected Population

Part 155 in 33 CFR directly applies to and regulates vessel owners and operators. Specified vessels prepare vessel response plans that must list the OSRO provider that the vessel owner or operator has contracted with and stipulate the vessel's ability to secure response resources within specific regulatory timeframes (Tiers 1, 2, and 3) in the event of an oil spill. The proposed rule has the potential to impact vessel response planholders covering vessels that transit the Washington HVPA and OSROs that provide response resources in the event of an oil spill. Based on Coast Guard review of vessel response plans, 2 OSROs may be impacted by the proposed rule. One OSRO has about 500 response resource contracts and the other OSRO has about 650 contracts with planholders that own vessels that call on the Cape Flattery higher volume port area. For the OSRO that has 500 contracts, about 3 percent or 15 are with U.S. planholders; the OSRO that has 650 contracts, about 2 percent or 13 are with U.S. planholders.

Costs

Vessel owners and operators would not need to revise or modify a current VRP to take into account expansion of the HVPA. Current VRPs already specify one or both of

the OSROs that provide response resources to vessel owners and operators in the affected waters. Vessel owners and operators must only list the OSRO by name and include the contact information for each OSRO in the VRP; no other information or details are required in the VRP that are dependent upon the geographic location of response equipment.

In addition to identifying the OSRO in the vessel response plan, vessel owners and operators must ensure the availability of response resources from the OSRO through a contract or other approved means. Depending on how the contract language is formulated, a contract may need to be modified to reflect the change in the HVPA geographical definition. One OSRO provided information which stated that contracts would need to be modified slightly to incorporate the geographic change of the expanded higher volume port while the other OSRO provided information which stated that no changes or modifications to existing contracts would be necessary on the part of either the OSROs or the planholders. For the purpose of this analysis, we estimate costs to modify a contract for the planholders of the OSRO that stated that changes would be necessary. This OSRO has about 500 planholders with written contractual agreements to secure response resource services in the event of an oil spill; of this amount, only about 3 percent or 15, are with U.S. planholders. Based on information we obtained from industry in formulating the Nontank Vessel Response Final Rule [78 *FR* 60100], it would take a General and Operations Manager approximately 2 hours of planholder time to amend the contract and send the contract to the OSRO for approval. If a plan preparer amends the contract on behalf of the planholder, we estimate it would take the same amount of time. We found that 36 percent of planholders perform this work internally

and 64 percent hire a plan preparer to perform this work on their behalf. The amendment of a contract is a one-time cost; we estimate little or no submission cost for planholders because nearly 100 percent of contracts are submitted by email to the responsible OSRO.

For planholders who perform the work internally and using the Bureau of Labor Statistics (BLS) May 2013 National Industry-Specific Occupational Employment and Wage Estimates for General and Operations Manager (Occupation Code 11-1021), we obtain a mean hourly wage rate of \$62.68. We then use BLS' 2014 Employer Cost for Employee Compensation databases to calculate and apply a load factor of 1.52 to obtain a loaded hourly labor rate of about \$95.30 for this occupation.⁵ For plan preparers, we obtained publicly available fully loaded billing rates for Senior Regulatory and Environmental Consultants and Environmental Program Managers from three environmental service companies using the General Services Administration's (GSA) Federal Acquisition eLibrary for service contracts.⁶ We took the average of these three rates to obtain a fully loaded hourly wage rate of \$151.00 (rounded). Of about 500 planholders who have contracts with this OSRO, only about 15 are U.S. planholders. Of the 15 U.S. planholders, about 36 percent would amend the contract internally. We estimate the one-time cost to these planholders to be about \$1,030 ($\$95.30 \times 2 \text{ hours} \times 500 \text{ planholders} \times 0.03 \times 0.36$, rounded). For the remaining 64 percent of U.S. planholders who have a plan preparer amend the contracts on their behalf, we estimate

⁵ Information can be viewed at, http://www.bls.gov/oes/current/naics3_483000.htm. A loaded labor rate is what a company pays per hour to employ a person, not the hourly wage. The loaded labor rate includes the cost of benefits (health insurance, vacation, etc.). The load factor for wages is calculated by dividing total compensation by wages and salaries. For this analysis, we used BLS' Employer Cost for Employee Compensation/Transportation and Materials Moving Occupations, Private Industry report (Series IDs, CMU2010000520000D and CMU2020000520000D for all workers using the multi-screen data search). Using 2014 Q2 data, we divide the total compensation amount of \$25.85 by the wage and salary amount of \$17.04 to get the load factor of 1.517 or 1.52. See the following website, <http://www.bls.gov/ncs/ect/data.htm>. We then rounded \$62.68 to \$62.70 and multiplied by 1.52 to obtain a loaded hourly wage rate of about \$95.00.

⁶ GSA Contract GS-10F-0263U Accessed 11/26/2014; GSA Contract GS-10F-0104T Accessed 11/26/2014; https://www.gsaadvantage.gov/ref_text/GS10F0335R/0N9LCV.2VV7AR_GS-10F-0335R_GS10F0335R.PDF

the one-time cost to be about \$2,899 ($\$151.00 \times 2 \text{ hours} \times 500 \text{ planholders} \times .03 \times 0.64$, rounded); combined the total estimated one-time cost to U.S. planholders to amend the contracts would be about \$3,930, rounded and undiscounted. We estimate the average one-time or initial cost for each U.S. planholder to amend a contract to be about \$262 ($\$3,930/15 \text{ U.S. planholders}$). We estimate the 10-year discounted cost to be about \$3,673 using a 7 percent discount rate and the annualized cost to be about \$523. Taking into consideration the uncertainty of this analysis, we request public comment on the cost impacts of this rule on OSROs and VRP planholders.

The remaining 485 planholders are foreign. For 36 percent of them who would amend the contracts internally, we estimate the one-time cost to be about \$33,300 ($\$95.30 \times 2 \text{ hours} \times 485 \text{ planholders} \times 0.36$, rounded). For the remaining 64 percent of foreign planholders who have a plan preparer amend the contracts on their behalf, we estimate the one-time cost to be about \$93,740 ($\$151.00 \times 2 \text{ hours} \times 485 \text{ planholders} \times 0.64$, rounded); combined the total estimated one-time cost to foreign planholders to amend the contracts would be about \$127,040, rounded, or about \$262 per planholder ($\$127,040/485 \text{ foreign planholders}$).

The final category of potential costs relates to the OSRO's ability to meet the specified response times in the new geographic area of the HVPA. Based on information provided to Coast Guard, one OSRO stated that additional response equipment would not be required and capital expenditures would not be necessary as result of the expanded higher volume port area under current Coast Guard OSRO classification guidelines. Based on data from the other OSRO, we estimate that total initial capital costs could be as high as \$5.5 million for temporary storage equipment and warehousing with annual

capital recurring costs of approximately \$250,000 for equipment maintenance, and up to \$1 million for barge recertification (included in the \$5.5 million estimate), warehousing, and other necessary resource equipment. However, we lack independent methods to verify these estimates. Moreover, the actual costs the OSRO may incur depend considerably on how they choose to comply with our regulations, which give OSROs substantial flexibility with respect to pre-positioning response resources.

To the extent one OSRO would incur additional costs due to this proposed rule (such as increased capitalization costs), we expect that these costs would be generally passed onto their VRP planholders equally although the OSRO who provided this information conceded that this was speculative at this point due to the uncertainty of expenditures that may be needed as described below. Using the highest value of capital costs provided to us of \$5.5 million, we use the capital recovery cost factor to determine the amount needed annually to recovery this payout since we assume the OSRO would finance the expenditures and attempt to recapture them equally over the life of the equipment. The capital recovery factor or ratio as it is often referred to, is the ratio of a constant annuity to the present value of the annuity over a given period of time using an acceptable discount rate, as in this case, 7 percent. The ratio also includes the general life expectancy of the investment and can be simply described as the “share of the net cost that must be recovered each year to ‘repay the cost of the fixed input at the end of its useful life.’ ” If we use a standard life expectancy of 20 years, we calculate the net amount that must be recovered by the OSRO annually to be about \$519,161, undiscounted.⁷ If we assume this cost is distributed equally over the 650 planholders (U.S. and foreign planholders who own vessels that transit the higher volume port area)

⁷ Calculated using a capital recovery factor of 0.0944.

under contract with this OSRO, the amount needed to be recovered by the OSRO to recapture this initial investment is estimated to be about \$800 (rounded) from each planholder annually, most likely in the form of higher retainer fees. However, only about 2 percent, or 13 of the 650 planholders are U.S. planholders. Therefore, for the 13 U.S. planholders, we estimate the total capital cost of this proposed rule to be about \$10,400 ($650 \text{ planholders} \times 0.02 \times \800) annually, undiscounted, in addition to annual maintenance costs of about \$385 per planholder ($\$250,000/650 \text{ planholders}$), undiscounted, in years 2 through 10 of the analysis period. We estimate the total 10-year discounted cost to the 13 U.S. planholders to be about \$75,400 using a 7 percent discount rate (the 10-year discounted cost is estimated to be about \$91,600 using a 3 percent discount rate) and the annualized cost to be about \$10,734. *See* Table 1.

It follows that the remaining 637 planholders are foreign. Again, if we assume this OSRO passes along its capital cost in the form of higher retainer fees to foreign planholders, we estimate the total capital cost of this proposed rule to foreign planholders to be about \$509,600 ($637 \times \800) annually, undiscounted, in addition to annual maintenance costs of about \$245,000 ($637 \times \385), undiscounted, in years 2 through 10 of the analysis period. We estimate the total 10-year discounted cost to foreign planholders to be about \$3.6 million using a 7 percent discount rate (the 10-year discounted cost is estimated to be about \$4.3 million using a 3 percent discount rate). As stated earlier, we neither have knowledge of the OSROs billing structure nor how costs would be distributed among planholders, although in our discussion with one OSRO, we learned that the composition of a planholder's vessel fleet affects the amount of the

retainer fee since vessels such as nontank ships requires different response resources as opposed to towing vessels, for example.

Table 1 summarizes the total estimated cost of the proposed rule to 28 U.S. planholders over a 10-year period of analysis.

Table 1. Summary of Estimated Costs of the Proposed Rule to U.S. Planholders (7 Percent Discount Rate, 10-year Period of Analysis, 2015 Dollars)

Year	Update Contracts for 15 U.S. Planholders		OSRO Equipment and Other Capital Costs		Total Costs	
	Undiscounted	Discounted	Undiscounted	Discounted	Undiscounted	Discounted
1	\$3,930	\$3,673	\$10,400	\$9,720	\$14,330	\$13,393
2	\$0	\$0	\$10,785	\$9,420	\$10,785	\$9,420
3	\$0	\$0	\$10,785	\$8,804	\$10,785	\$8,804
4	\$0	\$0	\$10,785	\$8,228	\$10,785	\$8,228
5	\$0	\$0	\$10,785	\$7,690	\$10,785	\$7,690
6	\$0	\$0	\$10,785	\$7,187	\$10,785	\$7,187
7	\$0	\$0	\$10,785	\$6,716	\$10,785	\$6,716
8	\$0	\$0	\$10,785	\$6,277	\$10,785	\$6,277
9	\$0	\$0	\$10,785	\$5,866	\$10,785	\$5,866
10	\$0	\$0	\$10,785	\$5,483	\$10,785	\$5,483
Total	-	\$3,673	-	\$75,390	-	\$79,062
Annualized	-	\$523	-	\$10,734	-	\$11,257

Totals may not sum due to independent rounding.

As Table 1 shows, for 15 U.S. planholders who may need to revise their contracts, we estimate the 10-year discounted cost of the proposed rule to be about \$3,673 at a 7 percent discount rate (using a 3 percent discount rate, we estimate the 10-year discounted cost to be about \$3,816). We estimate the annualized cost to be about \$523 for these 15 planholders.

For the OSRO who may incur capital costs as a result of this proposed rule and pass these costs along to its 13 U.S. planholders, we estimate the 10-year discounted cost to be about \$75,400 at a 7 percent discount rate (using a 3 percent discount rate, we estimate the 10-year discounted cost to be about \$91,624). We estimate the annualized cost to be about \$10,734 at a 7 percent discount rate for these 13 planholders.

We estimate the total present discounted cost of the proposed rule to all 28 U.S. planholders to be about \$79,062 at a 7 percent discount rate (using a 3 percent discount rate, we estimate the total 10-year discounted cost to be about \$95,440). We estimate the annualized cost to be about \$11,257 at a 7 percent discount rate.

We do not anticipate that this proposed rule would impose new costs on the Coast Guard or require the Coast Guard to expend additional resources because we do not expect any changes would be required to their VRPs.

Alternatives

Due to the specific nature of sec. 710(a), we are limited in the alternative approaches we can use to comply with Congress' intent. We considered three alternatives (including the preferred alternative) in the development of the proposed rule: (1) Revise 33 CFR 155.1020 by striking "Port Angeles, WA" in the definition of "Higher volume port area" of that section and inserting "Cape Flattery, WA"; (2) Revise 33 CFR 155.1020 by striking "50 nautical miles" in the definition of "Higher volume port area" and inserting "110 nautical miles"; and (3) Take no action. The Regulatory Analysis section further discusses the analysis of the preferred alternative (i.e., express adoption of the wording from sec. 710(a)) in comparison with other regulatory approaches considered.

Analysis of Alternatives

We considered three alternatives (including the preferred alternative) in the development of this proposed rule. The key factors that we evaluated in considering each alternative included: (1) The degree to which the alternative comported with the congressional mandate in sec. 710 of the Act; (2) What benefits, if any, would be derived,

such as enhancement of personal and environmental safety and security; and (3) Cost effectiveness. The alternatives considered are as follows:

Alternative 1: Revise 33 CFR 155.1020 by striking “Port Angeles, WA” in the definition of “Higher volume port area” of that section and inserting “Cape Flattery, WA.” Since 1996, 33 CFR 155.1020 has defined the seaward boundary of the Washington HVPA as an arc 50 nautical miles seaward of the entrance to Port Angeles, WA. The proposed change would relocate the arc’s center to Cape Flattery, covering approximately 50 additional nautical miles of open ocean.

Alternative 2: Revise 33 CFR 155.1020 by striking “50 nautical miles” in the definition of “Higher volume port area” and inserting “110 nautical miles.” This change would affect the other 13 HVPAs throughout the United States because of the level of response resources required with the significantly reduced response times that would be associated with a 110-mile outward shift of the existing HVPAs from their entrances. A shift of this distance would require the purchasing and positioning of heavier and more expensive equipment such as oceangoing tugs and barges. In addition, OSROs would incur considerable costs of potentially retrofitting existing HVPAs with shoreside docks. Since this would include all HVPAs, the economic impact on the response resource industry, as a whole, would be greater as opposed to a single HVPA. Furthermore, this option goes beyond the requirements of sec. 710 of the Act, which specifically requires the Coast Guard to initiate a rulemaking proceeding to modify the definition of the term “Higher volume port area” by striking “Port Angeles, WA” and inserting “Cape Flattery, WA.”

Alternative 3: Take no action. This option was not selected as it would not implement the intent of sec. 710 of the Act, which specifically requires the Coast Guard to initiate a rulemaking to modify the definition of the term “Higher volume port area” by striking “Port Angeles, WA” and inserting “Cape Flattery, WA.” It also precludes the protection intended by Congress for the waters at the entrance to and in the Strait of Juan de Fuca.

We chose Alternative 1, which codifies the regulation directly and specifically implements sec. 710 of the Act as described earlier. We rejected Alternative 2, because it went beyond the direction provided by Congress in sec. 710 and adds burden, both in the Puget Sound region and in the other HVPAs throughout the United States. We rejected Alternative 3, the “no action” alternative, because it would not implement sec. 710.

Benefits

We do not identify any historic cases that could support the development of quantifiable benefits associated with this proposed rule. Using the Coast Guard’s Marine Information for Safety and Law Enforcement (MISLE) database with casualty cases transferred from MISLE’s predecessor, the Marine Safety Management System database, we examined 283 spill cases from 1995 to 2013, beginning with the first spills that appeared in our database for this geographic region. Based on information from Coast Guard personnel who have experience in casualty case investigations and analysis, we found no cases or spills that would have benefitted from the expanded HVPA.

Qualitatively, oil spills are likely to result in a negative impact to the ecosystem and the economy of the surrounding area. These represent social welfare effects that are not accounted for solely by the amount of oil spilled into the water. In many cases, the

scope of the impact is contingent on the vulnerability and resiliency of the affected area. A barrel of spilled oil may not have the same impact in one area as it would in another. Some locations are more sensitive or vulnerable than others. Depending on the ecosystem, VRPs could mitigate impacts to habitats that house multiple species. An area with an ecosystem that is damaged as a result of previous environmental incidents or damaged due to the cumulative effects of environmental injuries over time can be expected to have higher benefits from oil spill mitigation.

The primary benefit of this proposed rule is to ensure that in the event of a spill, adequate response resources are available and can be mobilized within the expanded HVPA. This will ensure a timely response by vessel owners and operators and the OSROs in an effort to reduce the likelihood, and mitigate the impact of an oil spill on the marine environment that might occur in the expanded HVPA.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Regarding vessel owners and operators, as previously discussed, this proposed rule would codify the requirements in the Act of an expanded HVPA, and it would not require vessel owners and operators to make changes to VRPs. Therefore, owners and operators of vessels that transit the HVPA would not incur additional VRP modification costs as a result of this proposed rule. However, as assumed earlier for the purpose of

this analysis, if contracts would need to be modified, as stated by one OSRO on the part of the planholders, U.S. planholders would bear some costs of this proposed rule as shown earlier in this preamble. We estimate that each of the 15 U.S. planholders would incur an average one-time cost of about \$262 to amend its contract with the OSRO.

Also, regarding capital costs, it is unclear whether or how these costs impact vessel owners and operators without knowledge of the OSROs' billing structures. Additionally, proprietary information is not available that would allow us to determine the distribution of costs among many vessel owners and operators contracting with each OSRO. Nevertheless, in our earlier analysis, if we assume capital costs are incurred by one of the OSROs and we assume this cost would be passed along equally to U.S. planholders in the form of higher retainer fees, we estimate each of the 13 U.S. planholders would incur an annual cost of about \$800 from one particular OSRO in addition to \$385 in maintenance costs in years 2 through 10 of the analysis period for a total planholder cost of about \$1,185 in years 2 through 10 of the analysis period.

We assume for the purpose of this analysis that the two OSROs that provide response resource capabilities to the HVPA in Puget Sound may incur costs from this proposed rule and may likely pass along these costs to planholders in the form of higher retainer fees or planholders may incur one-time costs to amend their contracts with one of the OSROs. Using the North American Industry Classification System (NAICS) codes for businesses and the Small Business Administration's (SBA) size standards for small businesses, we determined the size of each OSRO. One OSRO has a primary NAICS code of 541618 with an SBA size standard of \$15 million, which is under the subsector group 541 of the NAICS code with the description of "Professional, Scientific, and

Technical Services.” The other OSRO has a primary NAICS code of 562998 with an SBA size standard of \$7.5 million, which is under the subsector group 562 of the NAICS code with the description of “Waste Management and Remediation Services.” Based on the information above and annual revenue data from publicly available and proprietary sources, Manta and ReferenceUSA, neither OSRO is considered to be small.

There are about 1,400 U.S. planholders that have either tank vessel, nontank vessel, or combined vessel response plans. Based on the affected population of this proposed rule relative to the size of the industry as a whole, in this case U.S. vessel response plan owners (planholders), this proposed rule would potentially affect 28 or about 2 percent of the total population of U.S. planholders in the United States. As described earlier and dependent upon the OSRO considered, we estimate a U.S. planholder may incur an annual cost between \$262 and \$1,185 in years 2 through 10 of the analysis period (and between \$262 and \$800 in the initial year since we assume maintenance costs are not incurred in the initial year of the analysis period) as a result of this proposed rule. Given the cost analysis and pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. section 605(b), the Coast Guard certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under ADDRESSES. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996,⁸ we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult LCDR John G. Peterson (see FOR FURTHER INFORMATION CONTACT). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

D. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995.⁹

E. Federalism

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the

⁸ Pub. L. 104-121.

⁹ 44 U.S.C. 3501-3520.

various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132. Our analysis follows.

As noted earlier in the preamble, this rule implements sec. 710 of the Act, which specifically directs the Coast Guard to amend 33 CFR 155.1020 by removing "Port Angeles, WA" and replacing it with "Cape Flattery, WA." This rule carries out the Congressional mandate by amending the regulations to reflect this required change. Furthermore, this rule does not have a substantial direct effect upon the laws or regulations of the State of Washington. Therefore, this rule is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

While it is well settled that States may not regulate in categories in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, the Coast Guard recognizes the key role that State and local governments may have in making regulatory determinations. Additionally, for rules with federalism implications and preemptive effect, E.O. 13132 specifically directs agencies to consult with State and local governments during the rulemaking process. If you believe this rule has implications for federalism under E.O. 13132, please contact the person listed in the FOR FURTHER INFORMATION section of this preamble.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995¹⁰ requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for

¹⁰ 2 U.S.C. 1531-1538.

inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

G. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

H. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

J. Indian Tribal Governments

A rule has implications for Indian Tribal Governments under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, if it has a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental principles and requirements described in E.O. 13175.

As noted above, this rulemaking implements the Congressional mandate by implementing sec. 710 of the Act. It will improve marine safety by increasing response times to mitigate or respond to an oil spill from vessels and does not have tribal implications that would require consultation under the E.O.

The Coast Guard, however, recognizes the key role that Indian Tribal Governments have in making regulatory determinations. Additionally, for rules with tribal implications, E.O. 13175 specifically directs agencies to consult with Indian Tribal Governments during the rulemaking process. If you believe this rule has implications for Indian Tribal Governments under E.O. 13175, please contact the person listed in the FOR FURTHER INFORMATION section of this preamble.

K. Energy Effects

We have analyzed this proposed rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under E.O. 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. We have determined that it is not a “significant energy action” under E.O. 13211, because although it is a “significant regulatory action” under E.O. 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and the Administrator of OMB’s Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

L. Technical Standards

The National Technology Transfer and Advancement Act¹¹ directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

M. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969,¹² and have made a preliminary determination that this is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under the “Public Participation and Request for Comments” section of this preamble. This rule is categorically excluded under section 6(b) of the “Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy.”¹³ This rule involves Congressionally-mandated regulations designed to protect the environment, specifically,

¹¹ 15 U.S.C. 272 note.

¹² 42 U.S.C. 4321-4370f.

¹³ 67 FR 48244 (July 23, 2002).

regulations implementing the requirements of the Act (redefining and enlarging the boundaries of the existing higher volume port area in the Strait of Juan de Fuca and Puget Sound, in Washington). An environmental analysis checklist is available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 155

Alaska, Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 155 as follows:

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION
REGULATIONS FOR VESSELS

1. The authority citation for part 155 is revised to read as follows:

Authority: 3 U.S.C. 301 through 303; 33 U.S.C. 1225, 1231, 1321(j), 1903(b), 2735; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1. Section 155.1020 also issued under section 710 of Pub. L. 111-281. Section 155.480 also issued under section 4110(b) of Pub. L. 101-380.

§ 155.1020 [Amended]

2. In § 155.1020, amend paragraph (13) of the definition of “Higher volume port area” by removing the words “Port Angeles” and adding, in their place, the words “Cape Flattery”.

Dated: May 7, 2015.

J.C. Burton,
Captain, U.S. Coast Guard,
Director of Inspections and Compliance.

[FR Doc. 2015-11760 Filed: 5/21/2015 08:45 am; Publication Date: 5/22/2015]